

**CRIMINAL JUSTICE SERVICES BOARD
COMMITTEE ON TRAINING**

MINUTES

March 8, 2007

A meeting of the Criminal Justice Services Board Committee on Training (COT) convened at 9:00 a.m. on Thursday, March 8, 2007, in House Room D of the General Assembly Building, in Richmond, Virginia.

Members Present:

Sheriff Beth Arthur
Mr. Robert L. Bushnell
Mr. Alfred T. Dowe, Jr.
Chief Alfred Jacocks, Vice Chair
Chief James R. Lavinder
Dr. Jay W. Malcan
Sheriff Charles W. Phelps, Chair
Mr. Sherman C. Vaughn

Members Not Present:

Mr. Gerald P. Eggleston (*Proxy for Gene Johnson, Director, Department of Corrections*)
Mr. Kevin S. Hodges
Mr. Edward M. Macon (*Proxy for The Honorable Karl R. Hade, Executive Secretary, Supreme Court of Virginia*)
Captain Lenmuel S. Terry (*Proxy for Colonel Steve Flagherty, Superintendent, Virginia State Police*)
Mr. Christopher R. Webb

DCJS Staff Present:

Ron Bessent
Colette Brown
Kim Buckner
Monica Cooks
Kim Freeberger
George B. Gotschalk

Sharon Gray
Samuel Hoffman
Eunice Kendell
Judith Kirkendall
Lisa McGee
Thomas E. Nowlin

Robbie Robertson
Lisa Thornton
Robert Tortelani
Kathleen Truesdale
Burt Walker

Others Present:

Carl Armstrong, *Virginia Bondsmen Association*
James Darrington, *Nightsweep Fugitive Investigations*
Kenneth B. Davis, *Private Security Services Advisory Board*
Nathan Elkey, *A-A Bonding Company*
Vince Ferrara, *Hampton Roads Criminal Justice Training Academy*
Edward Gallagher, *The Surety and Fidelity Association of America*
Stephen Grobel, *Virginia Bondsmen Association*
George Haudricourt, *ADT*
Maria Kear, *A-1 Bonding*
Daniel J. Kean, *Kean Bonding Co., Inc.*
Tim Kindrick, *Central Shenandoah Criminal Justice Training Academy*
John McAchren, *Virginia Commonwealth University Police Department*
Tyrone Morrow, *Fairfax County Criminal Justice Academy*
David Payne, *Property Bondsmen Association of Virginia*
Rich Schumacher, *Cardinal Criminal Justice Academy*
Joe Scott, *Alliance Bail Bonds*
Ronald Staton, *Central Virginia Criminal Justice Academy*
Dave Vice, *Fairfax County Criminal Justice Academy*
Grant Warren, *Virginia Commonwealth University Police Department*

Call To Order:

Sheriff Phelps called the meeting to order. The roll was called with six (6) members present, which did not indicate a quorum. He asked that approval of the minutes, all public hearings, and other items that require a vote be deferred until other members arrive. (*Chief Jacocks and Mr. Dowe arrived later.*)

Personnel Updates

Sheriff Phelps asked George Gotschalk to give a brief update on the changes and other items regarding staff within the Standards and Training Section. Mr. Gotschalk distributed a letter to

the members from Chief Lavinder, Roanoke County Police Department, advising that the General Assembly (GA) included language in its budget compromise that would authorize Roanoke County to establish an independent criminal justice academy if the Governor approves the budget, effective July 1, 2007. The letter asked that the Department examine the region's needs and consider certifying an independent training academy for the Roanoke County Police Department. Mr. Gotschalk advised that the budget is on the desk of the Governor, yet it has not been signed. He then requested that this item be deferred until the June meeting of the COT.

Mr. Gotschalk referred to an article in the Richmond Times Dispatch, the Associated Press, and MSNBC regarding law enforcement officers being put on duty in other states without being trained. A link to this article was sent to the members of the Committee electronically. He advised that he and Ron Bessent, Assistant Section Chief, Standards and Training, would be meeting with Chairman Phelps to bring additional information regarding training to the attention of the Committee to gauge its opinion on how law enforcement training should further be addressed in the Commonwealth.

Mr. Gotschalk advised that the Standards and Training Section is now fully staffed. Elizabeth White has been hired as the Region I Field Services Coordinator. Ms. White has an extensive background in law enforcement and has recently served as the accreditation manager for the Albemarle County Police Department. He also noted that Sherrod Davis has been hired as a Jails Trainer. Mr. Davis has a law degree, has taught at the Tidewater Technical Center, and is currently in orientation with one of the jails trainers and is in the process of reviewing lesson plans.

Mr. Gotschalk also mentioned that there are several individuals within the S & T Section who are able to retire within the next few years. He indicated that John Byrd, Assistant Section Chief, would be retiring in a few months, and Mr. Gotschalk is currently reviewing his position to determine how to proceed with changes. Other potential retirees are:

- Gary Benn, Jails Trainer,
- Ron Bessent, Assistant Section Chief,
- Eugene Claiborne, Jails Trainer,
- William Edmundson, Region III Field Services Coordinator
- George Gotschalk, Chief,
- Dale Kastelberg, Secretary, Jails Training, and
- Paul Ludwig, Region II Field Services Coordinator.

Mr. Gotschalk noted that the S & T Section will be facing significant changes in the next few years regarding staffing. Therefore, several issues regarding academy certification and re-certification, the Criminal Justice Reference Manual, and various guidelines would have to be addressed to accommodate anticipated changes. He added that he would meet with the Chairman to set up work groups on how to address these issues and noted that most of the suggestions and changes can be considered via electronic communication.

New Business:

New Legislation

Sheriff Phelps changed the order of business and asked George Gotschalk to give a brief update on legislative items considered by the 2007 Session of the General Assembly that would affect the Committee on Training and its constituents. Mr. Gotschalk referred to the aforementioned budget compromise that is awaiting the Governor's signature and advised that there is also a bill, **Senate Bill 1308**, which deals with the establishment of minimum entry-level, in-service and advance training standards for those persons designated to provide courthouse and courtroom security pursuant to the provisions of § 53.1-120 of the Code of Virginia and also establishes a time required for the completion of the training. He advised that the new language added states that the Department shall also establish separate training standards for those persons designated to provide partial courthouse security duties pursuant to the provisions of § 53.1-120. The time provided for the training of persons providing partial courthouse security shall not exceed two weeks in duration and shall focus on the subjects of courthouse security, firearms training and civil process. He noted that the new set of training standards are to be put in place, effective July 1, 2007, for partial courthouse and courtroom security officers.

Mr. Gotschalk advised that he will work with the Committee on Training in reviewing the bill as it establishes a timeline, and training candidacy has a specific time which designates specific training that needs to be addressed. This is a change in the policy from the GA. He introduced Sharon Gray, Supervisor, DCJS Jails Training, and acknowledged that they have a concern that the legislation does not mention training in defensive tactics. He added that newly hired personnel for courthouse security are generally elderly and will be asked to provide the same assistance as court security. He noted that the Department will be defining who these individuals are and determining the type of training for these positions. The Administrative Process Act (APA) will be utilized to address these training issues.

Mr. Gotschalk advised that the GA passed another piece of legislation that will add another position to the Committee on Training. He noted that Mr. Charles "Jim" Condon, who is a member of the Criminal Justice Services Board and represents the police fraternal organizations, will be filling the new position on the COT.

Sheriff Phelps asked if there were any questions or comments. Mr. Bushnell mentioned that **SB 1308** appears to be a piece of legislation that is specific to a certain locality and asked if the legislation defines courtroom security. Mr. Gotschalk responded that it does not. Mr. Bushnell noted his concern that the GA omitted a few items and did not include training in defensive tactics. He asked if this means that DCJS cannot establish training for defensive tactics. Mr. Gotschalk responded that this means that the Department can include defensive tactics. Yet, the concern is if defensive tactics could be included and still allow for the training in the other stipulated topics within the specified two-week time period.

Mr. Bushnell asked about the remedy if training for defensive tactics cannot be included in the two week timeframe. Mr. Gotschalk responded that the new training for individuals who are performing partial courthouse security would entail two five- (5-) day weeks. He did note that Cardinal Criminal Justice Academy is offering some training in two four- (4-) day weeks, utilizing a 10-hour days during their training sessions.

Mr. Bushnell asked about the Department's stance on **SB 1308**. Mr. Gotschalk responded that the Department submitted a Legislative Action Statement (LAS) to the Secretary of Public Safety and recommended an amendment removing this language. Mr. Bushnell asked if the Governor has taken a position on the bill. Mr. Gotschalk responded that he was unsure, but he believes the Governor has taken a "no position" on **SB 1308**. Mr. Bushnell asked if there is a possibility that the courthouse security officers could receive all of the necessary training in a two week time period. Mr. Gotschalk responded that the Committee on Training would have to adopt a set of regulations of what establishes minimum training standards for this position, which could take fourteen (14) to twenty-eight (28) months for adoption via the APA. He advised that if this is the will of the COT, the Committee could make a recommendation that the Governor consider from an amendment and have the amendment introduced at the next session of the GA. He noted that it is too late to submit a recommendation during the 2007 Session. Mr. Gotschalk added that for all other positions under the purview of the Department, DCJS establishes the minimum training standards. He noted that this does not mean that the academies only offer the minimum training, as the academies usually exceed the time frame for training. He added that it is up to the academies as which topics, in addition to the minimum training, the academies would include in their trainings.

Sheriff Arthur asked about the normal expected timeframe for the certification of individuals in court security. Mr. Gotschalk responded that the timeframe is usually two weeks. However, some individuals who are newly hired, and are candidates seeking a training waiver as they have been out of service for a number of years, would have to receive additional training because of the various changes and updates that have occurred since they were last employed as criminal justice personnel.

Sheriff Arthur asked what defines the perimeter of a courtroom or courthouse in the standards. Mr. Gotschalk responded that the law suggests that the courthouse is the interior of the actual building in which the court is held. He noted that the Department might include training in explosive devises, etc., in consideration of the exterior of the courthouse building for courthouse security personnel, as well. Sheriff Arthur asked if the training would include running magnetometers as part of the mandatory minimum training. Ms. Gray responded that the training of magnetometers is included in mandatory minimum training.

Sheriff Arthur mentioned that other issues of courthouse security should be recognized because of the current courthouse assessments that the Virginia Sheriffs Association (VSA), Virginia Association of Chiefs of Police (VACP), and the State Supreme Court that are undergoing. Mr. Gotschalk responded that these issues have been going on for some time as others have sued the Virginia Compensation Board regarding the appropriate number of deputies in a courtroom. Sheriff Arthur clarified that courthouse security is not funded by the Compensation Board.

Qualifying With Shotguns in Entry-level Law Enforcement Training

This item was deferred until the next meeting of the Committee on Training.

Old Business:

Report on Development of a Driver Training Lesson Plan for Jailors

Sheriff Phelps advised that in one of the public hearings held during the September 2006 meeting, Judy Kirkendall, Job Task Analysis Administrator, DCJS Standards and Training Section, and Sheriff Steve M. Draper, Martinsville City, presented the Rules Relating to Compulsory Minimum Training Standards for Jailors or Custodial Officers, Courthouse and Courtroom Security Officers and Process Service Officers. He mentioned that there was some discussion about driver training requirements for jailors. He introduced Ms. Kirkendall to provide an update to the Committee on the progress of developing a Driver Training Lesson Plan for Jailors.

Ms. Kirkendall advised that shortly after the public hearing in September 2006, a determination was made to establish a work group to develop a driver training lesson plan for jailors. She noted that the Department acknowledges the general assistance of the Department of Corrections/Academy for Staff Development (DOC/ASD) and its training manager, Gerald Eggleston and Captain Platt for their assistance in providing training materials for review by the work group. She then asked Sheriff Phelps to present the report of the work group.

Sheriff Phelps noted that the work group consisted of:

- Sheriff Charles Phelps, Isle of Wight Sheriff's Office,
- Sheriff Steve Draper, Martinsville Sheriff's Office,
- Deputy Dennis Webb, Arlington County Sheriff's Office,
- Lieutenant Lewis Johnson, Tidewater Regional Jail, and
- Ms. Judy Kirkendall, DCJS.

Sheriff Phelps mentioned that the information shared by the DOC/ASD for training that related specifically to DOC correctional transportation policies or correctional officers was eliminated. He noted that the legal liability portion of classroom instruction was condensed significantly since much of this is already covered in the legal issues training. Major emphasis was placed on the components of driver training for both classroom and practical demonstration. The work group believes that, in general, this would be a 2-day program for twelve (12) participants. If the classes are larger, the timeframe would be longer. He noted that personnel who are currently transporting inmates will be able to receive this training as an in-service course. Sheriff Phelps noted that as with any instructional material, there may need to be some revision after the training has been offered a few times and that the work group is open to this.

Sheriff Phelps advised that the academies will receive lesson plans and Power Point presentations electronically. If academies would like to receive a hard copy or have other questions, they can contact Ms. Kirkendall. He then asked if there were any other questions or comments.

Hearing none, the Chairman noticed that several other members of the Committee had arrived, which indicated a quorum and proceeded with items on the agenda that would require a vote from the membership. He advised that the minutes of the last meeting had been mailed out to the members and asked if there were any other questions or comments regarding them. Hearing

none, he asked for a motion to approve the minutes as written. Mr. Vaughn made a motion to approve the minutes; Sheriff Arthur seconded, and the minutes were approved unanimously.

Public Hearings on the Rules Relating to Instructor Standards

Sheriff Phelps officially opened the public hearings by reviewing the procedure that would be followed during the process. He noted that the first part of the hearings would deal with the Rules Relating to Instructor Standards and that the same procedure would apply to the approval of the Regulations Relating to Property and Surety Bail Bondsmen. He introduced Mr. Gotschalk to present a brief overview of the Rules Relating to Instructor Standards and discuss its specific points.

Mr. Gotschalk distributed the rules and recommendations and comment matrix to the Committee. (*Copies available upon request.*) He advised that an explanation of the recommendations to the rules and reasons for the recommendations had been emailed to the members and gave a brief overview of the following comments:

- **6 VAC 20-80-10 Definitions.**
“Apprenticeship”

Mr. Gotschalk advised that suggestions were made to allow academy directors an option to have their instructor complete their apprenticeship through an alternative training approved by the academy director and under the director’s supervision.

Recommendation: The Department recommends that this should be inserted in the language and should allow the apprenticeship process to move more smoothly.

- **“Provisional”**

Mr. Gotschalk advised that there were many discussions of the recommendations at the public hearing during the previous meeting of the COT regarding the removal of “Provisional” as one of the specialty categories of instructors.

Recommendation: The Department recommends that the language pertaining to provisional instructors be reinserted in the rules.

- **6 VAC 20-80-20 Compulsory minimum standards for instructors.**
B, C, D, E

Mr. Gotschalk noted that this section does not require general instructor certification. Recommendations were made that general instructor certification be a requirement before becoming certified in the various specialty areas. He advised that a number of individuals are conducting annual firearms and radar re-qualifications, and the suggestion is to leave the language as is. It is the decision of the agency administrator whether its personnel should seek certification in any of the instructor areas.

Recommendation: The Department recommends that the language remain the same.

- **6 VAC 20-80-40 Instructor apprenticeship requirements.**
A(3)

Mr. Gotschalk advised that the requirement would add that the instructor applicant must be skilled in classroom and skills presentations. The Instructor Rules Committee had

recommended that training would require instructional presentation to be increased to four hours for a General Instructor and would be increased to eight hours for the specialty areas. Comments from the public expressed opposition to this that these requirements were too long and should be reduced.

Recommendation: Mr. Gotschalk advised that the Department would defer to the COT's recommendation regarding this issue.

6 VAC 20-80-40 Instructor apprenticeship requirements.

B

Mr. Gotschalk explained that it has been recommended that the language be removed that the instructor shall document the successful completion of his apprenticeship in a manner prescribed by the certified academy that is conducting the apprenticeship. He noted that the question arises of how the academy justifies its own records of documentation if the academy does not require documentation of the instructor/evaluator. He advised that this requirement reinforces the initial requirements placing responsibility on the academy of maintaining the desired documentation and should assist the academy in obtaining the necessary documentation required.

Recommendation: The Department recommends that the language be retained.

- **6 VAC 20-80-50 Exemptions to certification requirements.**

Old #1.

The suggestion was made to retain the exemption language "Individuals who instruct three hours or less in any approved training session in a certified academy." Mr. Gotschalk noted that this would raise the question of how many hours would be required before certification becomes a necessity. The instructor certification is not only required for mandating training performance outcomes in entry-level training but also applies to all in-service related topics conducted by an academy. He noted that instructor certification only applies to employees of criminal justice agencies, criminal justice personnel who are required to comply with the training requirements, and personnel of certified academies. Yet, this does not apply to personnel of private organizations or persons employed by criminal justice agencies not required to comply with mandated training.

Recommendation: The Department recommends that the language be retained until it can be further reviewed for future consideration of deletion, amendment, or retention.

6 VAC 20-80-50 Exemptions to certification requirements.

Old #3, New #2.

The suggestion was made to delete language "Documentation of skills may be requested and final approval, if necessary, rests with the department." This language would remove the ability of DCJS to challenge professional or proficiency skills of an individual deemed to be exempted from instructional certification requirements. DCJS does not abrogate its responsibilities to ensure compliance with any of its regulations. The language does not require all such exemptions to be submitted to DCJS for approval, but provides the opportunity for the Department to selectively review any questionable exemptions.

Recommendation: The Department recommends that the current language be retained.

6 VAC 20-80-50 Exemptions to certification requirements.

New #2.

This section is geared primarily toward agency administrators, yet there was discussion of how it should apply to any employee of a criminal justice agency who had a professional or proficiency skill. Mr. Gotschalk mentioned that an example of this is in the difficulty of finding an individual who has significant Spanish-speaking skills to teach Spanish related subjects.

Recommendation: The Department recommends adding language to the end of the sentence that “such exemptions shall apply to employees of criminal justice agencies.” Mr. Gotschalk noted that this allows a highly qualified individual who has a documented proficiency skill, but is not certified as a criminal justice instructor, to be used as an instructor upon documentation of the skill.

6 VAC 20-80-50 Exemptions to certification requirements.

New #6.

The Virginia State Police suggested the inclusion of a clause to proposed section 6, requesting that subject matter experts currently being utilized as such be permitted to remain in that capacity and “grandfathered.”

Recommendation: The Department recommends inserting language that reads “This provision applies to all new personnel employed after July 1, 2007.”

Sheriff Phelps asked the members if there were any questions or comments. Hearing none, he asked if there were any individuals who had pre-filed with the Department or signed the sign-up sheet located at the entrance of the room to speak during the hearing. No one had pre-filed, but Tim Kindrick, Director, Central Shenandoah Criminal Justice Training Academy, had signed up to speak before the hearing. Mr. Kindrick declined to speak as he noted the issue had already been addressed during the hearing.

Chief Jacocks made a motion that the proposed changes to the Rules Relating to Instructor Standards include the suggestions made by Mr. Kindrick to **6 VAC 20-80-40 A.3**, that training shall “Consist of instructional presentation which shall total no less than two hours in duration for general instructor and an additional two hours for each specialty or skill area. The additional hours for specialty or skills area must demonstrate proficiency in skills presentation.” Sheriff Arthur seconded, and the motion was passed unanimously to include this provision.

Sheriff Arthur made a motion to accept the proposed changes to the Rules Relating to Instructor Standards. Mr. Dowe seconded; the motion was carried unanimously, and the rules were adopted.

Public Hearings on Regulations Relating to Property and Surety Bail Bondsmen

Sheriff Phelps introduced Lisa McGee, Interim Section Chief, DCJS Private Security Services Section, to present a brief overview of the Regulations Relating to Property and Surety Bail Bondsmen and discuss their specific points. He reminded the members that the hearing would follow the same procedure as that for the revisions to the Rules Relating to Instructor Standards.

Ms. McGee distributed the proposed regulations and errata sheet to the members and asked that the COT would approve the recommendations and adopt all of the changes that would be presented. (*Copies available upon request.*) She gave a brief account of the procedure followed regarding the regulations as the Department utilized the APA and sent notices of each of the regulations to the bail bondsmen, any individual who requested the information, magistrates, and courts. She advised that only eleven (11) comments were received regarding the regulations:

- Magistrates – 3 comments
- Bondsmen – 5 comments, and
- Others – 3 comments.

To develop and revise the regulations, a committee was established that was comprised of a variety of individuals, associations, representatives from the court system, magistrates, law enforcement and the Virginia Crime Commission. The Private Security Services Advisory Board (PSSAB) and the COT were provided with updates throughout the regulatory process. Ms. McGee advised that recommendations are being made to **HB 3208**, which defines “bail bondsmen” and the “Principal”. She noted that the bill has passed both chambers of the GA yet has not been signed by the Governor. She asked the COT to approve the recommendations to go into effect July 1, 2007 to coincide with the signing of the bill. If **HB 3208** is not signed, the Department would present before the COT for other recommendations.

Ms. McGee briefly reviewed some of the comments and recommendations as follows:

- **6 VAC 20-250-10 Definitions.**
 - Delete the definition of “Certified Training School”
 - Delete the definition of “Principal bondsmen”
 - Change “Agent bail bondsman” to “Agent”
 - Amend definition of “Property bail bondsman”
 - For clarity, add definitions for “License number”, “Manual Processing Fee”, and “Private Security Services Training School”
- **6 VAC 20-250-20 Fees.**
 - A.**
 - Amend paragraph to clarify the purpose of the fees
 - Insert “Manual Processing Fee - \$20.00” for initiation of web-based application database,
 - Change Fingerprint card processing fee to \$50.00, instead of \$60.00, and
 - Change In-service Alternate Training Credit fee to \$25.00, instead of \$50.00.
- **6 VAC 20-250-40 Initial Bail Bondsman License Application.**
 - C**
 - Amend paragraph and add language to clarify based on the definitions added.
 - C. 2**
 - “If the property used as collateral consists of cash or certificates of deposit, the property bail bondsman applicant shall submit to the Department verification of the amounts, and the names of the financial institution in which they are held.” This allows the Department to have some authority to ensure that cash is maintained for the purpose of bonding only.

C. 5

– Delete the word “principal” from paragraph before the word “property” to read “Each property bail bondsman applicant shall submit signed documentation authorizing special power of attorney for the purpose of bonding an any collateral provided for licensure that is not legally in the sole ownership of the principal bail bondsman.

C. 6

– Delete the word “principal” and “property” (similar to above)

- **6 VAC 20-250-50 Fingerprint Processing.**

A.

– Amend to read “Each person applying for initial or renewal licensure as a bail bondsman shall submit to the Department. . . .”

- **6 VAC 20-250-110 License Termination**

B.

- Insert a clause for bail bondsman that should be consistent with surety bondsman and allows for reinstatement. The paragraph should read, “Any property bail bondsman license or agent bail bondsman license issued pursuant to this article shall terminate immediately if the collateral requirements are not maintained and may not be applied for again until the person has met the collateral requirements pursuant to **6 VAC 20-250-40.**”

- **6 VAC 20-250-230 Reporting Requirements**

B

- Amend paragraph to include the licensed bail bondsmen, if arrested for a felony, shall submit a copy of the warrant of arrest to the Department within seven (7) days of the arrest. Submitting a copy of the warrant would allow the Department to review it and determine if it should be pursued further by administration. If the licensed bail bondsman is convicted of a felony, he/she shall report this, along with facts and circumstances regarding the conviction, to the Department within thirty (30) days.

- **6 VAC 20-250-250 Professional conduct standards; grounds for disciplinary actions**

C.

- Amend to read “A licensed bail bondsman shall ensure that each recognizance on all bonds for which he signs shall contain his name, license number and contact information.”

- **6 VAC 20-250-290 Uniforms and Identification Standards and Restrictions**

A.1

- The regulations were clarified to leave this up to the magistrate as long as the bail bondsman can show identification and indicate why they are on the property.

Ms. McGee advised that many of the comments received were concerning changes to the statutes. The statutes that cover the property bail bondsman are full of details. She noted that established requirements, professional, etc., and a number of the comments would require statutory changes, which staff could not accommodate.

Mr. Gotschalk referred to the number of comments received by the Department regarding the regulations and asked how many mailings were sent. Ms. McGee responded that mailings were sent to all of the approximately four hundred and thirty (430) licensed bail bondsmen. Mr. Gotschalk referred to Ms. McGee's earlier comment of three (3) associations submitting comments to the Department and asked how many bail bondsmen were members of those associations. Ms. McGee responded that she was not sure of the membership, but she indicated there were several individuals present at the hearing representing the various associations.

Sheriff Phelps asked if there were any other questions or comments. Chief Jacocks referred to a comment made about the fingerprint processing requirement at the time of the renewal of the license and asked about the status of the Department's recommendation on this. Ms. McGee responded that according to **6 VAC 20-250-50 A**, each person applying for initial or renewal licensure must submit fingerprints. Chief Jacocks asked if there was any reference in the regulations to the change in fingerprint processing on renewals and the purpose of the requirement of finger prints on renewals. Ms. McGee responded that there was no reference of change in the regulations. She advised that based on a study by the Virginia Crime Commission, it was discovered a number of bail bondsmen and bail enforcement officers were involved in criminal activity. Therefore, the commission placed restrictions on them to monitor their criminal history. Currently, every two years the bail bondsman must update his records with the Department. If one has committed a felony, one cannot be a bail bondsman.

Sheriff Phelps asked if there were any individuals who had pre-filed with the Department or signed the sign-up sheet located at the entrance of the room to speak during the hearing. No one had pre-filed. However, several individuals had signed up on the speaker sign-in sheet posted at the entrance to the meeting. The Chairman reminded all speakers to limit their comments to five minutes. He noted that he would make an exception to the order of the procedure as due to health reasons, one of the speakers had requested that another make his presentation before the Committee.

- **Edward Gallagher, General Counsel for Surety Trade Association.** He mentioned that the association consists of approximately five hundred (500) insurance companies that write the bail bonds. He noted that if a surety bail is implemented, the insurance company stands behind it. Property bail bonds are backed by the property, which is the only collateral used for that bond. He added that the problem with the statute is that it mentions that collateral should be set and that it is up to the Board to establish what is defined as collateral. He mentioned that the proposed regulations take the statutes verbatim. Yet, the point of the legislation is to inform the individual of how to show the pledge as collateral.

Mr. Gallagher cited the example that an individual seeking a loan or bond from a bank or insurance company must sign a legal document that their property should be used as collateral for the transaction. He advised that the proposed regulations should give the Department the ability to ensure that the property is not alienated or encumbered and would also give the Department the authority to liquidate the property if there is a default.

Mr. Gallagher noted that the Surety Trade Association respectfully suggests the following changes to the regulations:

- **6 VAC 20-250-40 C2.** Indicate that the Department should not only verify the amounts offered as collateral but should also obtain a security interest in the property.

- **6 VAC 20-250-40 C4.** Delete “if so directed by the Department” and make placing a deed of trust on the real estate to be used as collateral as a standard of the licensing process.

Mr. Dowe referred to the example of the use of property and asked how the deed of trust would offset the bank receiving its funds through liquidation, especially if the bank’s deed of trust establishes a lien position. Mr. Gallagher responded that if one has a second trust on property and the first trust is foreclosed, the second trust is cut. The collateral of the state would be what is left after the foreclosure and not the face value of the property. He advised that he would require that the property indicate that the Commonwealth of Virginia’s deed should become the first trust. He also noted that the individual should be required to show that there is adequate equity in the property and show any and all prior encumbrances to ensure that the state’s property is covered.

Mr. Bushnell asked if there is a provision in the regulations for a title search on the property used for collateral. Ms. McGee responded that there is no requirement for a title search. However, exempt individuals must submit verification of their collateral. Mr. Bushnell asked how the Department verifies the collateral. Ms. McGee responded that, currently, the Department is relying on the word of the bail bondsman. Mr. Bushnell mentioned that he was concerned that the Department and the Commonwealth of Virginia are relying on the affidavit of an individual who is a layman to determine that the property is free and clear of encumbrances, heirs, tax appraisals, or that there is absolute ownership. He asked if the Department could require a title certificate from an insurance company or other entity other than the best estimate of the bail bondsman. Ms. McGee responded that according to **6 VAC 20-250-40 C**, the Department requires an affidavit by the bail bondsman applicant indicating such, and under its discretion, the Department may require additional documentation to verify the amount of equity in the real estate and the amounts due under any other obligations.

Mr. Bushnell suggested that the Department consider including in the regulations that all bond applicants would require the insurance of a clear title by a title company as collateral. Ms. McGee responded that if the COT suggests that this is included in the regulations, the Department would follow up on it. Mr. Bushnell noted that there are title companies that ensure titles and suggested that the regulations include a provision that individuals applying for licensure as bondsmen be required to provide a certificate of title, at their own expense, to show that they own the property and have the power to pledge it as collateral. Mr. Dowe noted that this provision would not only help establish ownership but would help determine which liens, if applicable, take precedence over others. Ms. McGee explained that the Department has not received documentation of forfeitures not being paid. However, the Department is open to suggestions from the Committee on Training regarding deeds of trust, etc. She clarified that the regulations use language from the statutes that advises the Department’s discretion at various junctures in the regulatory process.

Mr. Bushnell mentioned that he is unsure if the procedure is a decision the Board should make and that he would feel more comfortable if the Commonwealth’s Attorney would maintain a deed of trust on property used as collateral. He suggests that at the time of licensure, there should be (1) a recorded deed of trust suggesting the Commonwealth’s lien that would prevent the bail bondsman from selling the property or suffering a judgment and that there should also be (2) a certificate verifying to the Department that the value of the property is at or around the amount suggested in the deed of trust. Ms. McGee asked in which provision of the regulations should

this be included. Mr. Bushnell responded that the requirement of certificates of deposits and deeds of trust should be established in all cases throughout the regulations. He then asked Mr. Gallagher if this inclusion in the regulations might satisfy the Surety Trade Association's concern regarding the regulations. Mr. Gallagher responded that it would.

- **David Payne, *Property Bondsmen Association of Virginia***. Mr. Payne advised that he has been a bondsman for seventeen (17) years. He referred to **6 VAC 20-250-260 B4** that there is a problem about receiving phone calls. Mr. Payne explained with this provision it appears the Department is suggesting that the bondsmen are soliciting business from any inmate while the bondsman is on the premises. He suggested that there should be documentation of which bondsman is handling which cases. He noted that there is no situation where a bail bondsman can enter through the rear of the jail. Yet, when they are working with inmates about bonds, other prisoners will approach them about their situation. He suggests that this provision be put back into the regulations to covert these events.

Mr. Payne mentioned that most members of his association would not have a problem with the need for a deed of trust on real estate. He acknowledged that the crime commission suggested the deed of trust be used on a case by case basis. Mr. Payne suggested that deeds of trust be used in direct relation to risks of loss. He recalled studies done by George Mason University, Northwestern University, and the University of Chicago that notes that there is less than two percent of losses incurred by the bondsmen. He noted that if the focus is on the potential loss of lending money, the financial institutions would not lend any money. Mr. Payne advised that the Department has the right to suspend a bondsman and should require deeds of trust as needed. He noted that property bondsmen can hold property as collateral. However, insurance companies cannot. He referred to an article in USA Today, entitled "Skipped Bailee Pays Price." Several insurance companies and new agencies sometimes abandon the attempt to pursue one who has skipped bail.

Mr. Payne advised that if one is filing for a new insurance company, the minimum requirement is fifty thousand dollars (\$50,000) with a maximum of five hundred thousand dollars (\$500,000) of liens. He added that this is not deeds of trust on assets in Virginia as property bondsmen only have assets located in Virginia, whereas insurance companies do not. He also noted that the fees that bondsmen are charged are based on the number of complaints and investigations. He acknowledged that when the Department took over the regulation of bondsmen, there were a number of complaints and active investigations. He concluded with the question if consideration would be given to decreasing the licensing fees of bondsmen in relation to the decrease in complaints and investigations and workloads over the next year.

- **James Darrington, *Nightsweep Fugitive Investigations***. Mr. Darrington is a licensed bail enforcement agent. He referred to **6 VAC 20-250-230 B** and suggested that this issue be reduced to misdemeanors. He asked the Committee to have the regulations approved as is and restrict licensure of bail bondsmen with felonies. He noted that as a bail enforcement officer he is eliminated by misdemeanors, and oftentimes the bails bondsmen go out on their own investigations and make the arrests. He added that a small number of bail bondsmen are acting under the purview of a bail enforcement agent. He also referred to **6 VAC 20-250-250 L**, where he has seen bonds being revoked when someone has a protective order placed against them. In this example, Mr. Darrington notes that the party is abused, gets upset with the individual after getting them out of jail, and then calls the bail bondsman, which would result in the bondsman being caught in the situation with law enforcement. He concluded with asking that the COT would approve the proposed regulations and adopt them with the amendments.

- **Nathan Elkey, A-A Bonding Company.** Mr. Elkey advised that he has been posting bail for forty-two (42) years. He agrees with the Department and its efforts. Yet, he feels the problem with the bail bondsmen process is when the individual who has been bonded does not appear before the court, and the license of the bail bondsman should be revoked until the bond fee is paid. Mr. Elkey feels that this is an example that the old regulations not being adequately enforced as the new regulations are being developed.

Mr. Bushnell asked if Mr. Elkey was saying that he would like to see a requirement, practice, or statute that notes that whenever a bondsman who suffers forfeiture has not adequately covered the fees, the court should automatically notify DCJS. Mr. Elkey responded that it should be practiced that if the bondsman does not pay the forfeiture, the bondsman does not make the bond. He noted that this practice would put all of the bondsmen on an even playing field.

- **Maria Kear, A-1 Bonding.** Ms. Kear advised that she has been a real estate attorney for twenty-eight (28) years, as well as a surety bail bondsman and a property bail bondsman. She noted that she was reinforcing what Mr. Gallagher had mentioned regarding the need for a deed of trust and/or title report in the regulations. She acknowledged that she had applied to become a property bondsman under the new regulations as her own test case and had received her approval within seven (7) or eight (8) days. She mentioned that the property she had pledged is owned by a limited liability company (LLC), which she notes is the most preferred method of property ownership in Virginia. She noted that there is no place on the application where the applicant is required to indicate that he/she owned the property. She referred to Ms. McGee's earlier statement that if the bondsman does not own the property they must provide a power-of-attorney. Ms. Kear cited this as a loophole as she had contacted the Department to inform them that there was no place on the application to indicate ownership and was told that the Department would take her word for it.

Ms. Kear advised that if **HB 3208** is passed, the problems in the industry would be compounded by four hundred (400) percent. She noted that if there is a deed of trust or a title report, someone should also be required to prove that he/she actually owns the property. She also noted that there is nothing in the regulations to prevent the transfer of property once an application has been approved. She mentioned that she could transfer her membership interest in the LLC, and the property would still be pledged on her application although she no longer owns that entity. She advised that there is nothing in the regulations to prevent this. She reiterated that she was not asked to prove ownership, although she had contacted the Department to determine if there should be an attachment to the application where the applicant might indicate such.

Ms. Kear suggested that there should be another means of ensuring ownership of the property for security or a guarantee that there is a security interest for the Commonwealth. She also mentioned that her deed is incorrect and does not list her name as owner. She explained that Fairfax City had mistakenly indicated that her property is owned by a judicial limited partnership (LP), which is also incorrect. She reiterated that she attached this document to her affidavit, and the Department approved it without question. She surmised that some form of proof of ownership might have prevented this.

Mr. Bushnell asked Ms. Kear how she would respond to Mr. Payne's assertion that requiring a deed of trust on the property would inappropriately hamper the bondsman's ability to retain credit in his/her personal life. Ms. Kear responded that most people have mortgages on their homes and still have some equity in their homes. She added that as long as there is equity in the property, whether or not there is a first mortgage, this should suffice as collateral. She added that

ownership of the home should be secured with proof of ownership and indicate absolute equity above and beyond what the bondsman has pledged to the Commonwealth.

Sheriff Phelps noted that there would be a minor adjustment to the procedure of this public hearing, as **Mr. Joe Scott, Alliance Bail Bonds**, had asked that Mr. Carl Armstrong, speak on his behalf, allowing Mr. Armstrong to speak for a total of ten minutes.

- **Carl Armstrong, Virginia Bondsmen Association.** Mr. Armstrong advised he is the immediate past President of the Virginia Bondsmen Association, and that Mr. Scott is the current President of that association. He mentioned that there are three major concern of the association:

1) **6 VAC 20-250-220 Recordkeeping Standards. #2.** He noted that there is a clerical issue in this provision where it states “or causing a defendant to be released on his own recognizance” should be removed as the bail bondsman would not have a file on a defendant if the defendant is released on his own recognizance because the bail bondsman would not have written a bond. He suggested that this clause be deleted.

2) **6 VAC 20-250-250 Professional conduct standards; grounds for disciplinary actions.** He noted that **H** should be stricken from the regulations as a surety bail bondsman is writing under a power-of-attorney for an insurance company and is never personally responsible to pay the forfeiture. However, the surety is responsible for the forfeiture, and the Bureau of Insurance has a way to collect an unpaid claim.

3) **6 VAC 20-250-280 Collateral received in the course of business standards and requirements.** He mentioned that bondsmen often accept collateral or indemnity from a third party (the parent, spouse, etc.). He noted that the language “third party or other” would prohibit them from accepting collateral from a third party trying to get the defendant out of jail.

Mr. Armstrong added that he is in agreement with Mr. Gallagher regarding deeds of trust. He referred to Mr. Payne’s assertion that they do not have a problem with title certificate but do have a problem with the deed of trust. Mr. Armstrong advised that one cannot have one without the other. He noted that the title certificate does show at that particular moment that there is ownership or equity. However, later the property can become encumbered whether with or without the bondsman’s knowledge.

- **Stephen Grobel, Virginia Bondsmen Association.** Mr. Grobel advised that he is a surety bail bondsman from Hampton, Virginia, and is in support of the comments made by Mr. Gallagher and Ms. Kear. He acknowledged that self-certification of equity in property and trust is good, but the Department should have a means to verify that the Commonwealth has secured positions in these properties in case the bond goes bad. He noted a situation in Newport News, where a bondsman had written bonds on property for years, had accumulated a number of forfeitures, and had been called by the courts after discovering that there were several deeds of trust on the real property he used as security. The property bail bondsman did not pay on the forfeitures and left the Commonwealth without a means of collecting on the collateral. He added that bail is the most effective means of assuring that a defendant would appear in court so the victim might confront them utilizing the judicial system. He noted that the threat of forfeiture is what makes the bail process a reality as the bail bondsman is responsible for recovering the defendant to ensure their appearance in court to respond to the charges against him.

- **Daniel J. Kean, Kean Bonding Co., Inc.** Mr. Kean acknowledged that all of his questions had already been answered in the hearing.

- **Kenneth Davis, Private Security Services Advisory Board.** Mr. Davis noted that in addition to serving on the PSSAB, he is also a bail bondsman for a bonding company, was a onetime

property bondsman, and for the past fifteen years has been a surety bail bondsman. He advised that if you do not cover your property with a first deed of trust there is no guarantee that you could recover the collateral. He added that if there is a forfeiture or default, the bondsman would pay out of his own pocket before any consideration is made for compensation from his property. Mr. Davis mentioned that a pledge of security needs to be done. He noted that the surety company offers a sixty percent (60%) cut for the surety company and a forty percent (40%) cut for the writer. He advised that the bondsman is not responsible for any of the forfeitures as long as he clears it through the company first. He added that there is usually a set minimum balance of twenty thousand dollars (\$20,000).

Mr. Davis noted that a surety company can go bankrupt and take the members from the Board of Directors of the bankrupt company and start a new company. He also noted that if a bondsman is irresponsible and run up a tab on what he is writing, the bondsman should not be licensed. Mr. Davis mentioned that there are few bonds that have the individual who is arrested as the one who is offering insurance or indemnity. He noted that oftentimes a third party is used to offer indemnity and then pays out of the property. If an individual is bailed out of jail and does not show up in court, the bondsman would go to the third party for compensation before going into his own pocket to pay, so as not to look to the bondsman's property to pay for compensation. He advised that the Department needs solid regulations as a foundation for the licensure of bail bondsmen.

Sheriff Phelps asked if there were any questions or comments. Mr. Gotschalk suggested that because of the time constraints the discussions might need to be continued at the next meeting of the Committee on Training. Ms. McGee responded that the Department would not have a problem with this suggestion. However, she noted that some of the comments in the matrix were suggesting amendments to the statutes. She mentioned that most of the regulations were verbatim of the statutes, which the Department can not change.

Mr. Bushnell referred to **6 VAC 20-250-40 C4**, which begins, "Each property bail bondsman, if so directed by the Department, shall place a deed of trust on the real estate" He suggested that the Department give serious thought to deleting this language "if so directed" to make it mandatory in all cases that a deed of trust is placed on the property. He also noted that the Department should reconsider naming the commonwealth's attorneys as trustee under the deeds of trust as they do not specialize in real estate law. He advised that since bail bondsmen frequently serve numerous jurisdictions, there could be conflicts among the commonwealth's attorneys in the affected localities if the commonwealth's attorney who is seeking forfeiture is also the trustee. He suggested that someone other than the commonwealth's attorney, perhaps the attorney general, become trustee.

Mr. Dowe referred to **6 VAC 20-250-40 B**, which he advised does not mention marketable security. He mentioned that from a financial advisement perspective, it would be far more advantageous for one who has several thousands of dollars of marketable securities to collateralize them to honor the officers of the banks at a certain percentage versus liquidating the collateral and having to deal with the consequences of the taxes and giving away their investments for bonds. He offered that the easiest method is to require the individual to liquidate the securities and convey it through cash. Mr. Dowe asked if the Department is relegated to the consideration that if property is liquidated, the Commonwealth could only receive a percentage towards marketable securities as collateral. Ms. McGee responded that anything else provided as collateral (besides cash, certificates of deposit, or real property) is at the discretion of DCJS.

Mr. Dowe also referred to the earlier mention of the bail bondsman approaching the prisoners face to face and asked if other means of communicating with the prisoners, e.g. electronically, exist without having to approach them physically or in person. Ms. McGee could not respond to this as Sheriff Phelps suggested that the public hearings be concluded due to time constraints. Mr. Dowe made a motion that the Public Hearing on Regulations Relating to Property and Surety Bail Bondsmen be continued until the next meeting of the Committee on Training. Chief Jacocks seconded, and the motion was voted upon and carried unanimously.

Public Comment

Sheriff Phelps asked if there was anyone in the audience that would like to address the COT concerning matters within its purview.

Next Meeting

Hearing no other concerns from the audience, Sheriff Phelps noted that due to a special two-day meeting of the Criminal Justice Services Board on May 9 and 10, 2007, the next meeting of the Committee on Training is scheduled for June 14, 2007.

Adjournment

A motion was made by Mr. Vaughan to adjourn the meeting. The motion was seconded by Chief Jacocks, was carried unanimously, and the meeting was adjourned at 11:08 a.m.

Respectfully submitted,

Thomas E. Nowlin
Recording Secretary

Approved: _____

The Honorable Charles W. Phelps
Chair

Date

Attachment(s)